**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**FIRST APPEAL No. 772 of 1990**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE KS JHAVERI**

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**SIKANDAR U DESAI - Appellant(s)**
**Versus**
**NAVYUG TRANSPORT COMPANY & 3 - Defendant(s)**

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**Appearance :**
MR MB GANDHI for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1 - 2, 4,
MR PF MAKWANA for Defendant(s) : 3,

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**CORAM : HONOURABLE MR.JUSTICE KS JHAVERI**

**Date : 26/07/2006**

**ORAL JUDGMENT**

1. By way of this appeal, the appellant has challenged the judgement and award dated 28.03.1988 passed by the Motor Accident Claims Tribunal (Special), Ahmedabad Rural at Narol in MACP No. 673 of 1984 whereby the Tribunal dismissed the claim petition of the appellant.

2. The appellant had filed claim petition claiming compensation to the tune of Rs. 70,000/- for the accident which occurred on 14.04.84, while the appellant was travelling as employed labourer in the truck no. GTS 7681

driven by respondent no.2 and owned by respondent no.1 going from Bhavnagar to Ahmedabad. It is the case of the appellant that when the said truck reached Sulekhram factory Odhav, Ahmedabad city, the appellant started unfastening the clips of wooden planks of the said truck and one iron billet from the truck fell upon his right leg thereby causing multiple fracture and other injuries on his body. It is alleged by the appellant that the opponent no.2 negligently and abruptly applied brakes while reversing when the truck was supposed to be stationary while unfastening the clips of the wooden planks. The Tribunal after hearing the parties passed the aforesaid award.

3. This matter was listed time and again before this Court. On 27.03.06, when the matter was listed, the following order was passed:

> “At the request of Mr. Makwana, learned advocate for the respondent no.3, S.O to 28/03/06.”

3.1 Thereafter, when the matter was listed on 24.07.06, the following order was passed:

> “Today, when the matter is called out in the 4th call, Mr. Gandhi, ld. Adv for appellant is present, but, Mr Makwana ld. Adv for the

respondent is not present, as a last chance, S.O to 27th July, 2006."

4. Today, the matter is taken up for hearing in the second round. Heard learned counsel for the appellant. The Tribunal after going through the facts and circumstances of the case and the evidence placed on record observed that the claim petition of the appellant under Section 110A is not maintainable and he is entitled to claim compensation only under the Workmen's Compensation Act. Therefore, in view of the fact that the Tribunal did not have jurisdiction to grant compensation under the Workmen's Compensation Act, the Tribunal dismissed the claim petition of the appellant. However, in view of the decision of the Apex Court, now the Tribunal has jurisdiction to entertain the claim petition and decide the amount of compensation. In that view of the matter, the matter is required to be remanded to the Tribunal for fresh consideration.

5. In the premises aforesaid, the appeal is partly allowed. The award of the Tribunal is quashed and set aside. The matter is remanded to the Tribunal for fresh consideration. It is made clear that this court has not entered into the merits of the matter and the matter is remanded in view of the fact that the Tribunal now has

jurisdiction to decide the same. The Tribunal shall therefore hear and decide the matter on merits and decide the quantum, if any payable to the original claimants. Since the claim petition is of the year 1984, the Tribunal shall decide the same within a period of four months from the date of receipt of the writ of this Court. No order as to costs.

(K.S. JHAVERI, J.)

Divya//